

940 CMR 32.00: DOMESTIC WORKERS

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32.01: Purpose, Scope, and Other General Provisions

- (1) Purpose. The purpose of 940 CMR 32.00 is to interpret, enforce, and effectuate the purposes of the Domestic Workers Bill of Rights Act, St. 2014, c. 148, as codified at M.G.L. c. 149, § 190.
- (2) Scope. 940 CMR 32.00 applies to any domestic worker, whether an independent contractor or an employee, who is hired, paid, or permitted to perform work of a domestic nature within a household, in accordance with M.G.L. c. 149, § 190(a).
- (3) Benefits Maintained. Nothing in 940 CMR 32.00 shall affect any policy or practice of an employer which provides for greater, additional or more generous wages, benefits or working conditions to a domestic worker than those required under 940 CMR 32.00 or by M.G.L. c. 149, § 190.

32.02: Definitions

As used in 940 CMR 32.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Childcare on a Casual, Intermittent and Irregular Basis. Employment involving childcare that does not exceed 16 hours per week on average. Employment in excess of these hours shall still be deemed to be on a "casual, intermittent and irregular basis" if the excessive hours of employment are without regularity or are for irregular or intermittent periods, such as during school vacation periods. Childcare on a casual, intermittent and irregular basis may include the performance of some household work not related to caring for children, provided that such work is incidental to the childcare (*i.e.*, does not exceed 20% of the total hours worked).

Domestic Worker. An individual, including an independent contractor as defined by M.G.L. c. 149, § 148B or an employee, who receives compensation from an employer to provide any service of a domestic nature within a household, except:

- (a) any individual who provides services to persons with disabilities or seniors under the MassHealth personal care attendant program or any successor program under M.G.L. c. 118E, §§ 70 through 75;
- (b) any individual who provides childcare services but whose vocation is not childcare; and
- (c) any individual whose services primarily consist of childcare on a casual, intermittent and irregular basis for one or more family or household members.

Employ. To suffer or permit to work.

Employer. One or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers who employ a domestic worker to provide services within a household, whether the individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers have an ownership interest in the household or not. For instance, a homeowner who hires a live-in housekeeper to work in the homeowner's residence is the employer of the housekeeper. Whereas, the owner of a cleaning company who contracts with homeowners to provide house cleaning services is the employer of the house cleaners who perform that domestic work. An employer shall not include:

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- (a) any staffing agency, employment agency or placement agency licensed or registered pursuant to M.G.L. c. 140; or
- (b) any individual for whom a personal care attendant provides services under the MassHealth personal care attendant program or any successor program under M.G.L. c. 118E, §§ 70 through 75.

Job-protected Leave. Any instance of absence from work or relief from duty following which a domestic worker has a right to return to work and an employer cannot take any adverse action as a result of the domestic worker's absence from work or relief from duty.

Rest Period. A period of time with complete freedom from all duties and during which a domestic worker may either leave the employer's premises or stay on the employer's premises for purely personal pursuits. If an employer agrees to pay a domestic worker for his or her rest days, those days shall be considered vacation time and pay under M.G.L. c. 149, § 148.

Shared Services. Services provided by a domestic worker to more than one employer that are intentionally coordinated by the employers. For example, in the context of childcare services, shared services are commonly referred to as a "nanny share."

Sleep Period. A regularly scheduled sleeping time of not more than eight hours, during which the employer provides adequate, decent and sanitary sleeping quarters and the domestic worker can enjoy a night's sleep, uninterrupted by duties.

Week. A seven-day calendar week beginning on Sunday and ending on Saturday.

Working Time. Compensable time that includes all time during which a domestic worker is required to be on the employer's premises or to be on duty and any time worked before or beyond the end of the normal scheduled shift to complete work. Working Time shall include meal periods, rest periods and sleeping periods unless a domestic worker is free to leave the employer's premises and use the time for the domestic worker's sole use and benefit and is completely relieved of all work-related duties.

32.03: Working Conditions

- (1) An employer who employs a domestic worker for 40 hours a week or more shall provide a rest period of at least 24 consecutive hours in each calendar week and a rest period of at least 48 consecutive hours during each calendar month.
- (2) Where possible, a rest period should accommodate religious worship, including the domestic worker's attendance at a place of worship, if any.
- (3) A domestic worker may voluntarily agree to work during a previously designated rest period, provided that the agreement:
  - (a) is in writing, in a language easily understood by the domestic worker, and made prior to performance of services during the previously designated rest period;
  - (b) specifies the particular rest period(s) during which the domestic worker agrees to work; and
  - (c) is signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.
- (4) A domestic worker shall be compensated at the overtime rate for all hours worked over 40 per week pursuant to M.G.L. c. 151, § 1A.
- (5) Rest periods, whether paid or unpaid, shall be considered job-protected leave. Rest periods are in addition to any job-protected leave to which a domestic worker may have a right under the Earned Sick Time Law, M.G.L. c. 149, §§ 148C and 148D and regulations, or under the Parental Leave Act, M.G.L. c. 149, § 105D.



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- (6) When a domestic worker who does not reside on the employer's premises is on duty for less than 24 consecutive hours, the employer shall pay the domestic worker for all such time as working time pursuant to M.G.L. c. 151, and 940 CMR 32.00.
- (7) When a domestic worker is required to be on duty for a period of 24 consecutive hours or more, all meal periods, rest periods, and sleep periods shall constitute working time, unless the employer and the domestic worker agree otherwise, provided the agreement:
  - (a) is in writing, in a language easily understood by the domestic worker, and made prior to performance of services;
  - (b) specifies the particular meal period(s), rest period(s), and sleep period(s) which the domestic worker agrees are not working time; and
  - (c) is signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.
- (8) Deductions. An employer may deduct from a domestic worker's wages for the costs of food and beverages actually provided to the domestic worker provided that:
  - (a) the food and beverages are voluntarily and freely chosen by the domestic worker;
  - (b) the domestic worker can easily bring and prepare meals on the premises;
  - (c) working conditions caused by the employer's or another household member's dietary restrictions or other related preferences do not prevent a domestic worker from storing, preparing, or consuming meals of his or her preference; and
  - (d) the amount deducted does not exceed what is permitted pursuant to M.G.L. c. 151 and 940 CMR 32.00.
- (9) An employer may deduct from a domestic worker's wages an amount for lodging, provided:
  - (a) the lodging complies with the state sanitary code contained in 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation State Sanitary Code: Chapter II* or other regulations that may be promulgated under the authority of the Department of Public Health or a successor agency under M.G.L. c. 111;
  - (b) the employer does not require that the domestic worker reside on the employer's premises or in a particular location; and
  - (c) the deductions by the employer are consistent with 455 CMR 2.04(1)(a) or other regulations that may be promulgated under the authority of the Department of Labor Standards or a successor agency under M.G.L. c. 151.
- (10) No deductions for food, beverages, or lodging shall be made from a domestic worker's wages without the domestic worker's agreement, and further provided that such agreement:
  - (a) is in writing, in a language easily understood by the domestic worker, and made prior to the time when deductions are incurred;
  - (b) specifies the particular deductions to which the domestic worker agrees to consent; and
  - (c) is signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.
- (11) No other deductions shall be made from a domestic worker's wages other than for specifically named, identified and agreed-upon purposes, goods or services required or expressly authorized by law.
- (12) An employer's dissatisfaction with the quality of a domestic worker's services shall not be a basis for withholding, or taking deductions from, a domestic worker's compensation.
- (13) Privacy. An employer shall not monitor or record, in any manner, a domestic worker's use of restroom or bathing facilities, sleeping or private living quarters, or any activities associated with the worker's dressing, undressing, or changing clothes.
- (14) An employer shall not restrict or interfere with a domestic worker's private communication, unless the domestic worker's private communication significantly interferes with his or her performance of expected duties (permitting, for example, reasonable restrictions which an employer may impose during working hours in the performance of childcare services), monitor a domestic worker's private communications, or take any of the domestic worker's documents or other personal effects.



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(15) An employer shall not engage in any conduct which constitutes forced services under M.G.L. c. 265, § 49, conduct constituting trafficking of persons for forced services under M.G.L. c. 265, § 51, or conduct constituting trafficking of persons for sexual servitude under M.G.L. c. 265, § 50.

(16) If the employer requires that a domestic worker reside in the employer's premises or other particular location, the employer shall provide the domestic worker with the ability and reasonable opportunity to access telephone and internet services and permit the domestic worker to send and receive communications by text message, social media, electronic or regular mail, and telephone, without the employer's interference. If the employer has telephone or internet services, the employer shall provide reasonable access to the telephone and/or internet service without charge to the domestic worker. If the employer does not have telephone and/or internet services, the employer shall provide the domestic worker with a reasonable opportunity to access telephone and/or internet service at another location at the domestic worker's expense.

(17) Rest Periods. An employer may provide a domestic worker with a paid rest period. If an employer provides a paid rest period, the rest period shall be treated as a vacation payment under M.G.L. c. 149, § 148.

(18) Termination. If a domestic worker resides in the employer's household or at a location required by the employer and the employer terminates employment without cause, the employer shall either:

- (a) provide written notice and at least 30 days of lodging, either on-site or in comparable off-site conditions; or
- (b) provide written notice and severance pay in an amount equivalent to the domestic worker's average earnings for two weeks of employment. The average weekly earnings for a domestic worker who has been employed for less than two weeks shall be arrived at by extrapolating from an average day's wages.

If the employer chooses to provide either off-site lodging or severance, the employer shall allow the employee at least 24 hours to vacate the employer's household.

(19) No advance notice or severance payment shall be required where the employer provides a good faith allegation, in writing before or at the time of the termination, with reasonable basis and belief and without reckless disregard or willful ignorance of the truth that the domestic worker has abused, neglected or caused any other harmful conduct against the employer, members of the employer's family or individuals residing in the employer's household.

(20) If a domestic worker resides in the employer's household or in a location required by the employer and termination is for cause relating to conduct other than that described in 940 CMR 32.03(19), the employer shall provide:

- (a) advance written notice, if practicable; and
- (b) a reasonable opportunity to find other lodging of no less than 24 hours.

32.04: Notice and Recordkeeping

(1) A domestic worker may request a written evaluation of his or her work performance from an employer after three months of employment and annually thereafter. A domestic worker may inspect and dispute any written evaluation as provided under M.G.L. c. 149, § 52C.

(2) An employer shall keep a true and accurate record of wages and hours for three years in accordance with M.G.L. c. 151, § 15.

(3) An employer who employs a domestic worker for 16 hours or more a week shall provide to the domestic worker, and retain for a period of three years from the date when services were performed, the following information:

- (a) the rate of pay, including overtime and additional compensation for added duties or multilingual skills;
- (b) working hours, including meal periods and other time off;



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- (c) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises and, whether or not earned sick days, vacation days, personal days, holidays, severance, transportation costs and health insurance costs, if paid or reimbursed;
  - (d) any fees or other costs, including costs for meals and lodging;
  - (e) the responsibilities, including regularity, associated with the job;
  - (f) the process for raising and addressing grievances and additional compensation if new duties are added;
  - (g) the possibility of eligibility to collect workers' compensation benefits if injured on the job;
  - (h) if applicable, the circumstances under which the employer may enter the domestic worker's designated living space on the employer's premises;
  - (i) what the employer deems as cause for purposes of termination;
  - (j) the required notice of employment termination by the employer; and
  - (k) any additional benefits afforded to the domestic worker by the employer.
- (4) An employer who employs a domestic worker for 16 hours or more a week shall provide a time sheet to the domestic worker at least once every two weeks, recording the hours of compensable time worked each day in the preceding two weeks, in a language easily understood by the domestic worker.
- (a) The domestic worker shall acknowledge agreement with the employer's recording of the compensable time worked each day, by signing the time sheets and returning to the employer. The employer shall provide the domestic worker with a copy (whether in paper or electronic form) of the time sheet signed by both the employer and domestic worker.
  - (b) If the domestic worker disagrees with the employer's records of the hours actually worked on any given day, the domestic worker shall have the opportunity to note the number of hours he or she believes to have been worked on any given day, on that time sheet alongside the employer's record of hours worked, and any signing of the time sheet by the domestic worker shall be done without prejudice to the domestic worker's rights to payment of wages for compensable time actually worked.
  - (c) In any dispute concerning the hours worked, the domestic worker's failure or refusal to sign a time sheet shall not relieve the employer of the obligation to pay wages in the manner required by M.G.L. c. 149 and M.G.L. c. 151, or 940 CMR 32.00.
- (5) An employer who employs a domestic worker for 16 hours or more a week and fails to comply with these record-keeping requirements shall have violated paragraph (3) of M.G.L. c. 151, § 19, and may be subject to a civil citation or order as provided in M.G.L. c. 149, § 27C.
- (6) An employer's obligation to provide the information required under 940 CMR 32.04(3)(a) through (k) shall occur prior to the domestic worker's performance of any services.
- (7) Prior to the domestic worker's performance of any services, an employer shall provide a domestic worker with a notice that contains all applicable Massachusetts and federal laws that apply to the employment of domestic workers.
- (8) An employer may satisfy the notice of rights requirements under 940 CMR 32.04(7) by providing a domestic worker with a physical copy (or if the domestic worker prefers, an electronic copy) in the worker's native language (if available on the website) of the Attorney General's Notice of Domestic Workers Rights available on the Attorney General's website at [www.mass.gov/ago/dw](http://www.mass.gov/ago/dw).
- (9) An employer shall furnish all records maintained relating to a domestic worker to the Attorney General upon demand.

32.05: Additional Provisions

- (1) If shared services are provided by a domestic worker, each employer shall be jointly and severally liable for their obligations under M.G.L. c. 149, § 190 and 940 CMR 32.00. Every employer who has engaged a domestic worker to provide shared services shall sign all written agreements affecting the parties and, if the total employment equals or exceeds 16 hours, every employer shall sign and be a party to an agreement that provides the information required under 32.04(3).
- (2) No domestic worker shall be penalized or suffer any adverse action in any way by an employer as a result of any action on the part of domestic worker to seek to exercise the worker's rights under 940 CMR 32.00 or M.G.L. c. 149, § 190, pursuant to M.G.L. c. 149, § 148A.
- (3) The Attorney General may enforce the obligations set forth in M.G.L. c. 149, § 190 and 940 CMR 32.00 by seeking injunctive or declaratory relief in Superior Court. Pursuant to M.G.L. c. 149, § 27C, the Attorney General may also issue a written warning or a civil citation to an employer, requiring that an infraction be rectified, that restitution be made to the domestic worker, if any, and/or that a civil penalty be paid to the Commonwealth. Civil citations may be appealed to the Division of Administrative Law Appeals, as provided by M.G.L. c. 149, § 27C.
- (4) A domestic worker claiming to be aggrieved by a violation of M.G.L. c. 149, § 190 may, 90 days after the filing of a complaint with the Attorney General, or sooner if the Attorney General assents in writing, and within three years after the violation, institute and prosecute in the domestic worker's own name and on the domestic worker's own behalf, or for the domestic worker and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

32.06: Severability

If any provision of 940 CMR 32.00 or the application of any provision of 940 CMR 32.00 to any person or circumstance is held invalid, the validity of the remainder of 940 CMR 32.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 32.00: M.G.L. c. 149, § 190(o).